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5 UNITED STATES DISTRICT COURT  
6 DISTRICT OF NEVADA

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8 TINAMARIE LOPEZ,

Case No. 2:19-cv-00657-KJD-VCF

9 Petitioner,

10 v.

ORDER

11 STATE OF NEVADA, et al.,

12 Respondents.  
13

14 Petitioner, Tinamarie Lopez, has filed a petition for writ of habeas corpus under 28  
15 U.S.C. § 2254. ECF No. 1. The court has reviewed the habeas petition pursuant to Rule  
16 4 of the Rules Governing Section 2254 and concludes that the petition shall be dismissed  
17 without leave to amend.

18 Rule 4 provides in pertinent part:

19 If it plainly appears from the petition and any attached exhibits that  
20 the petitioner is not entitled to relief in the district court, the judge must  
dismiss the petition and direct the clerk to notify the petitioner.

21 The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition  
22 for writ of habeas corpus, either on its own motion under Rule 4, pursuant to the  
23 respondent's motion to dismiss, or after an answer to the petition has been filed. See  
24 *Herbst v. Cook*, 260 F.3d 1039 (9<sup>th</sup> Cir. 2001). Allegations in a petition that are vague,  
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1 conclusory, or palpably incredible are subject to summary dismissal. *Hendricks v.*  
2 *Vasquez*, 908 F.2d 490, 491 (9<sup>th</sup> Cir. 1990). A petition for habeas corpus should not be  
3 dismissed without leave to amend unless it appears that no tenable claim for relief can  
4 be pleaded were such leave granted. *Jarvis v. Nelson*, 440 F.2d 13, 14 (9<sup>th</sup> Cir. 1971).

5 According to her petition, Lopez was convicted in state court of armed robbery with  
6 use of a deadly weapon and received a sentence of 4 to 10 years imprisonment. The only  
7 claim she raises in her petition is that the Nevada Department of Corrections (NDOC) has  
8 misapplied state law “to restrict me from earning statutory good time credits.” ECF No. 1  
9 at 6.

10 On its face, Lopez’s petition suffers from at least two defects that preclude this  
11 court from granting relief. First, habeas review in federal court is “limited to deciding  
12 whether a conviction violated the Constitution, laws, or treaties of the United States.”  
13 *Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991). Federal habeas relief is not available “to  
14 reexamine state-court determinations on state-law questions.” *Id.* Thus, Lopez’s lone  
15 claim alleging that NDOC has failed to comply with state law in administering her sentence  
16 is not cognizable in a federal habeas proceeding.

17 Second, Lopez indicates that she has sought state-court relief in relation to her  
18 sentence, but the state proceeding is still “pending.” ECF No. 1 at 6. A prisoner seeking  
19 relief from a state conviction or sentence via a federal writ of habeas corpus first must  
20 exhaust his state court remedies before presenting her constitutional claims to the federal  
21 courts. 28 U.S.C. § 2254(b). To satisfy the exhaustion requirement, the claim must have  
22 been fairly presented to the state courts completely through to the highest state court  
23 available. *E.g.*, *Peterson v. Lampert*, 319 F.3d 1153, 1156 (9<sup>th</sup> Cir. 2003) (*en banc*); *Vang*  
24 *v. Nevada*, 329 F.3d 1069, 1075 (9<sup>th</sup> Cir. 2003). The exhaustion requirement insures that

1 the state courts, as a matter of federal-state comity, will have the first opportunity to pass  
2 upon and correct alleged violations of federal constitutional guarantees. See, e.g.,  
3 *Coleman v. Thompson*, 501 U.S. 722, 731 (1991).

4 Because Lopez's petition does not state a cognizable claim for federal habeas  
5 relief and she has yet to exhaust her state-court remedies, the petition will be dismissed  
6 without leave to amend.

7 IT IS THEREFORE ORDERED that the petition for writ of habeas corpus (ECF No.  
8 1) is DISMISSED without leave to amend. The Clerk shall enter judgment accordingly.

9 IT IS FURTHER ORDERED that the court declines to issue a certificate of  
10 appealability.

11 IT IS FURTHER ORDERED that the Clerk shall serve a copy of the petition and  
12 this order on the respondents via the Nevada Attorney General.

13 DATED THIS <sup>22</sup> day of April \_\_\_, 2019.

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16 KENT J. DAWSON  
17 UNITED STATES DISTRICT JUDGE  
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